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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4068 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S.R SHUKLA
[Since Decd. through his Heir
&
Legal Representative
MINAXIBEN S. SHUKLA]

Versus

DEPUTY MANAGING DIRECTOR

Appearance:

1. Special Civil Application No. 4068 of 1990
MR DR BHATT for Petitioner
MR KB NAIK for M/s. TRIVEDI & GUPTA
for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date of decision: 12/10/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner, a Branch Manager in the middle management grade Scale-II in State Bank of India [hereinafter referred to as, "the Bank"], challenges the order dated 27th March, 1987 made by the appointing authority. By impugned order, the petitioner has been dismissed from service of the Bank. The departmental appeal preferred against the said order has also been dismissed on 9th February, 1989. Feeling aggrieved, the petitioner has preferred the present petition.

A chargesheet came to be issued upon the petitioner on 16th August, 1984 for several acts of misconduct committed by him during the period from 16th December, 1975 to 5th February, 1979 when he was the Branch Manager at Dharampur Branch of the Bank. It was alleged that the petitioner was guilty of gross negligence in proper discharge of duties and that the petitioner mislead the depositors with ulterior motive to cover up the fraud perpetrated on their accounts and thus colluded the perpetrators to defraud the Bank. The imputation of charge contains several incidents of wrongful withdrawal of money from eight different Savings Bank Accounts by forging signature of the Account-holders. After holding due inquiry, the imputation of charge was proved. It was also proved that the petitioner instead of inquiring into the aforesaid fraudulent withdrawals, made good the loss suffered by the account holders by debiting the amount of such fraudulent withdrawals to the Protested Bills Account. In view of the aforesaid guilt proved against the petitioner, by impugned order, the petitioner was dismissed from service.

Learned advocate Mr. Bhatt has submitted that the petitioner was not supplied copy of the report of the inquiry officer/disciplinary authority. The petitioner has suffered a grave prejudice on account of non-supply of the report of the inquiry officer. He has also submitted that under communication dated 12th January, 1987, the Officers' Association advised the petitioner not to file the defence statement. Thus, the petitioner was prevented from filing the defence statement causing

grave prejudice to the petitioner. He has submitted that for the very acts of misconduct, criminal prosecution was lodged against the petitioner and two others. In the said criminal case, the petitioner was acquitted on 31st January, 1984. In view of the acquittal from the criminal charge, the disciplinary proceedings could not have proceeded against the petitioner with respect to the very incident. He has submitted that the finding of guilt recorded against the petitioner is based on no evidence i.e. no evidence which can be said to be legally acceptable. He has also submitted that the penalty of dismissal from service is too harsh. Considering the nature of guilt, the petitioner ought to have been visited with lesser punishment.

Learned advocate Mr. Naik has contested the petition. He has submitted that no prejudice has been caused to the petitioner for want of report of the inquiry officer/disciplinary authority. He has submitted that unless the petitioner demonstrates that a grave prejudice was caused to him, the order of punishment cannot be vitiated on the sole ground that the report of the inquiry officer/disciplinary authority was not supplied to the petitioner in advance or was supplied to him alongwith the order of dismissal. He has relied upon the report of the inquiry officer/disciplinary authority and has pointed out that there was sufficient evidence to hold the petitioner guilty of the charge levelled against him. He has also submitted that the criminal prosecution referred to by the petitioner was in connection with the fraudulent withdrawals from the Savings Bank Account No. G-95. No criminal prosecution was lodged with respect to other transactions which were the subject matter of disciplinary inquiry. He has also submitted that considering the purpose of criminal prosecution and the stringent proof required for recording conviction, the decision in criminal prosecution shall not affect the decision in disciplinary proceeding. In support thereof, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of Union of India & Ors. vs. Mohd. Ramzan Khan [AIR 1991 SC 471] and of Allahabad District Cooperative Bank Limited, Allahabad vs. Vidhya Varidh Mishra {2004 (6) SCC 482}.

In the matter of Union of India & Ors. [Supra], the three-Judges Bench of the Hon'ble Supreme Court upheld the right of the delinquent to receive copy of the report of the inquiry officer recording finding of guilt and proposed punishment. It has been held that, "...We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary

authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter." However, considering the contrary view taken by several High Courts and also by the Hon'ble Supreme Court in some of its decisions, the Hon'ble Court held that, "this shall have prospective application and no punishment imposed shall be open to challenge on this ground."

In the matter of Allahabad District Cooperative Bank Limited [Supra], the Supreme Court has held that, "..It is a settled law that in a disciplinary inquiry a conclusion different from that arrived at by a criminal court, may be arrived at. The strict burden of proof required to establish guilt in a criminal court is not required in disciplinary proceeding."

I see no substance in either of the contentions raised by Mr. Bhatt. The impugned order had been made before 20th November, 1990. As held in the matter of Union of India & Ors. [Supra], the law pronounced in the said judgment shall apply prospectively. No order of punishment made before the said date would be vitiated on the sole ground that the report of the inquiry officer finding the delinquent guilty of misconduct was not supplied to the delinquent or that the delinquent had no opportunity to meet the finding of guilt recorded by the inquiry officer. Further, the learned advocate Mr. Bhatt has not been able to establish that the prejudice much less a grave prejudice was caused to the petitioner was for want of inquiry report and of opportunity to meet the finding of guilt recorded by the inquiry officer.

As recorded hereinabove, the criminal prosecution was in connection with the fraudulent withdrawals from one of the Savings Bank Accounts, while the disciplinary inquiry was in connection with fraudulent withdrawals from several such Savings Bank Accounts. Hence, it cannot be said that the petitioner was prosecuted by the criminal court on identical charges. On perusal of the inquiry officer's report, it is quite clear that there was sufficient evidence legally acceptable to prove the guilt of the petitioner.

Considering the nature of the guilt proved against the petitioner and the financial loss caused to

the Bank, the only punishment which could have been appropriately imposed upon the petitioner would be dismissal from service. I, therefore, do not agree that the said punishment is harsh or disproportionate to the guilt proved against the petitioner.

The order of punishment made against the petitioner cannot be vitiated on the ground that the petitioner was not properly advised by his Association and that pursuant to such advice, the petitioner did not avail of the opportunity of filing the statement of defence.

No other contention is raised before me. The petition is dismissed with cost. Rule is discharged.

{Miss R.M Doshit, J.}

Prakash*